SPLOS/WP.2/Add.1
28 June 1996

ORIGINAL: ENGLISH

MEETING OF STATES PARTIES
Fifth Meeting
New York, 24 July-2 August 1996

DRAFT AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Addendum

Annotation to article 12

Introductory note 1/

1. The fourth Meeting of States Parties requested the Secretariat to provide the sources to the text of article 12 of the draft Agreement on the privileges and immunities of the International Tribunal for the Law of the Sea, contained in document SPLOS/WP.2, dated 27 February 1996, and also the texts of proposals made by delegations. The texts of relevant precedents are provided below in tabular form for ease of comparison. Appropriate references are provided to the proposals of delegations.

2. The table consists of the following:

First column: Text under review as contained in SPLOS/WP.2;

Second column: Text recommended by the Preparatory Commission to the Meeting of States Parties (LOS/PCN/152 (vol. I), Addendum 3, p. 123); 2/

Third column: Text originally proposed to the Preparatory Commission by the Secretariat (LOS/PCN/SCN.4/WP.6);

Fourth column: Other sources.

Extract from document SPLOS/WP.2	Text recommended by the Preparatory Commission to the Meeting of States Parties, LOS/PCN/152 (vol.I), Addendum 3	Text originally proposed to the Preparatory Commission by the Secretariat (LOS/PCN/SCN.4/WP.6)	Other sources
Article 12 Members and Members ad hoc of the Tribunal	**Article 12 Members and Members ad hoc of the Tribunal**	**Article 8 Members of the Tribunal 3/**	
1. Members of the Tribunal, when engaged on the business of the Tribunal, shall enjoy the privileges, immunities, facilities and prerogatives accorded to heads of diplomatic missions in accordance with the Vienna Convention. a/	1. Members of the Tribunal, while exercising their functions in the territory of each State Party, shall, pursuant to article 10 of the Statute, enjoy the privileges, immunities and facilities as are accorded to heads of diplomatic missions accredited to that country. Such treatment shall include the privileges, immunities, facilities and prerogatives accorded to diplomatic agents in accordance with the Vienna Convention and international law.	1. Members, while exercising their functions in any country, shall, pursuant to article 10, Annex VI, of the United Nations Convention on the Law of the Sea, enjoy the privileges, immunities and facilities as are accorded to heads of diplomatic missions accredited to that country. Such treatment shall include the privileges, immunities, facilities and prerogatives accorded to diplomatic agents in accordance with the Vienna Convention on Diplomatic Relations.	
2. Members of the Tribunal and members of their families forming part of their households shall be accorded every facility for leaving the country where they may happen to be and for entering and leaving the country where the Tribunal is sitting. On journeys in connection with the exercise of their functions, they shall in all countries through which they may have to pass enjoy all the privileges, immunities and facilities granted by these countries to diplomatic agents in similar circumstances.	2. Members of the Tribunal and their spouses and dependent relatives forming part of their households, shall be accorded every facility for leaving the country where they may happen to be and for entering and leaving the country where the Tribunal is sitting. On journeys in connection with the exercise of their functions, they shall in all countries through which they may have to pass enjoy all the privileges, immunities and facilities granted by these countries to diplomatic agents.	2. Members shall be accorded every facility for leaving the country where they may happen to be for entering the country where the Tribunal is sitting, and again for leaving it. On journeys in connection with the exercise of their functions, they shall, in all countries through which they may have to pass, enjoy all the privileges, immunities and facilities granted by these countries to diplomatic envoys.	**General Assembly resolution 90 (I), paragraph 3 4/** [The General Assembly] Recommends that judges should be accorded every facility for leaving the country where they may happen to be, for entering the country where the Court is sitting, and again for leaving it. On journeys in connection with the exercise of their functions, they should, in all countries through which they may have to pass, enjoy all the privileges, immunities and facilities granted by these countries to diplomatic envoys.

a/ **IRELAND** proposed the following addition to the end of paragraph 1:

"... in all States including the country of which they are nationals or in which they are permanent residents."

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Article 12 **Members and Members ad hoc of the Tribunal**	**Article 12** **Members and Members ad hoc of the Tribunal**	**Article 8** **Members of the Tribunal** 3/	
3. If Members of the Tribunal, for the purpose of holding themselves at the disposal of the Tribunal, reside in any country other than that of which they are nationals or permanent residents, they shall, together with the members of their families forming part of their households, be accorded diplomatic privileges, immunities and facilities during the period of their residence there. The States concerned must exercise their jurisdiction over those persons in such a manner as not to interfere with the functions of the Tribunal.	3. Members of the Tribunal, when holding themselves at the disposal of the Tribunal for the exercise of their functions, their spouses and dependent relatives forming part of their household shall be accorded diplomatic privileges and immunities during the period of their residence in any country other than that of which they are nationals or permanent residents, provided that in their own country or in any country of which they are permanent residents they enjoy privileges, immunities and facilities to the extent admitted by such State. The States concerned, however, must exercise their jurisdiction over those persons in such a manner as not to interfere with the functions of the Tribunal.	3. Members of the Tribunal, for the purpose of holding themselves permanently at the disposal of the Tribunal, shall be accorded diplomatic privileges and immunities during the period of their residence in any country other than their own.	
4. In order to secure, for Members of the Tribunal, complete freedom of speech and independence in the discharge of their functions, the immunity from legal process in respect of words spoken or written and all acts done by them while discharging their functions shall continue to be accorded, notwithstanding that the persons concerned are no longer Members of the Tribunal or performing those functions.	4. In order to secure, for Members, complete freedom of speech and independence in the discharge of their functions, the immunity from legal process in respect of words spoken and written and all acts done by them in discharging their functions shall continue to be accorded, notwithstanding that the persons concerned are no longer Members of the Tribunal or performing those functions.	4. In order to secure, for the Members, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer performing those functions.	**Convention on the Privileges and Immunities of the United Nations, section 12** 5/, 6/ In order to secure, for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

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Article 12 **Members and Members ad hoc of the Tribunal**	**Article 12** **Members and Members ad hoc of the Tribunal**	**Article 8** **Members of the Tribunal** 1/	
		5. Where the incidence of any form of taxation depends upon residence, periods during which the Members are present in a State for the discharge of their duties shall not be considered as periods of residence.	**Convention on Privileges and Immunities of the United Nations, section 13** 5/ Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a State for the discharge of their duties shall not be considered as periods of residence.
5. Members of the Tribunal shall be accorded, together with members of their families forming part of their households, the same repatriation facilities in time of international crises as diplomatic agents are accorded under the Vienna Convention.	5. Members shall be given, together with their spouses and dependent relatives forming part of their household, the same repatriation facilities in time of international crises as diplomatic agents are given under the Vienna Convention and international law.	6. Members shall be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crises as diplomatic envoys are given under the Vienna Convention on Diplomatic Relations adopted on 18 April 1961.	**Vienna Convention on Diplomatic Relations, article 44** 7/ The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

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Article 12 Members and Members ad hoc of the Tribunal	**Article 12 Members and Members ad hoc of the Tribunal**	**Article 8 Members of the Tribunal 3/**	
6. Privileges, immunities, facilities and prerogatives are accorded to the Members of the Tribunal not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Tribunal. b/	6. Privileges, immunities, facilities and prerogatives are accorded to the Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Tribunal.	7. Privileges and immunities are accorded to the Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Tribunal.	
7. This article shall apply to Members of the Tribunal even after the expiry of their terms of office if they continue to exercise their functions in accordance with article 5, paragraph 3, of the Statute.	8. This article shall apply to Members even after the expiry of their terms of office if they continue to exercise their functions, in accordance with article 5, paragraph 3, of the Statute. It shall also apply mutatis mutandis to Members ad hoc.		
8. This article shall also apply to Members ad hoc of the Tribunal. c/		8. This article shall also apply to Members ad hoc.	

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b/ **Germany** proposed that a new paragraph be added as article 12, paragraph 6 (bis):

"The immunities referred to in this article shall not extend to an action for damages arising from an accident involving a vehicle in respect of which the Member of the Tribunal may be liable. Pursuant to the laws and regulations of the State concerned, the Members of the Tribunal shall be required to have insurance coverage against third-party risks in respect of vehicles owned or operated by them."

c/ **CANADA** and **ARGENTINA** proposed a new paragraph be added as article 12, paragraph 8 (bis):

"A person mentioned in articles 12 to 16 shall not enjoy the privileges and immunities provided therein in the territory of the State or States of which the person is a national, a landed immigrant or a permanent resident, with the exception of the immunity from legal process in respect of words spoken or written and all acts done by the person in discharging his or her duties, which immunity shall continue even after the person has ceased to exercise his or her functions."

Notes

1/ Negotiating history:

The Preparatory Commission, in recommending the draft "Protocol on the privileges and immunities of the International Tribunal for the Law of the Sea" to the Meeting of States Parties, stated as follows:

> "The final draft Protocol on the privileges and Immunities of the International Tribunal for the Law of the Sea, formulated by the Commission and its Special Commission 4, addendum 3 hereto, should provide the basis for negotiating and entering into such a protocol.
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> "The Commission discussed the question of privileges, immunities and facilities in relation to the Tribunal and its work, taking into account the items listed in SCN.4/WP.1, paragraphs 3 and 5 to 7. Account was also taken of SCN.4/WP.4, which identified issues for consideration, and also SCN.4/1985/CRP.8 and 9. The summary of this review is contained in the Chairman's summary of discussions (SCN.4/L.9).
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> "Thereafter, a draft Protocol on the Privileges and Immunities of the International Tribunal (SCN.4/WP.6) was prepared by the Secretariat at the request of the Commission (LOS/PCN/L.53, para. 19 (c)). This working paper was reviewed article by article by the Special Commission, as reflected in the Chairman's summary of discussions (SCN.4/L.13 and Add.1).
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> "Subsequently, a revised draft Protocol on the Privileges and Immunities of the International Tribunal (SCN.4/WP.6/Rev.1 and Corr.1 and 2) prepared by the Secretariat, taking into account the deliberations in the Special Commission, the draft texts proposed for specific provisions (SCN.4/1988/CRP.24, 26 and 27; SCN.4/1989/CRP.31 and 33-35), and the suggestions of a drafting nature, and providing compromise texts on issues where agreement was not reached (LOS/PCN/L.91, para. 10), was considered and formulated by the Special Commission in accordance with its deliberations."
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> (See final Report of the Preparatory Commission (LOS/PCN/152 (vol. I), chap. II, sect. 2, p. 15.))

2/ LOS/PCN/SCN.4/WP.16/Add.3, p. 123, addendum to the Report of the Preparatory Commission.

3/ The original text drafted by the Secretariat which was presented to Special Commission 4 of the Preparatory Commission as document LOS/PCN/SCN.4/WP.6 (see LOS/PCN/152 (vol. II), p. 211).

4/ General Assembly resolution 90 (I) of 11 December 1946 provides for the privileges and immunities of the judges of the International Court of Justice.

5/ Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946. (United Nations, Treaty Series, vol. I, p. 15).

6/ The discussions of this provision by the Preparatory Commission is contained in document LOS/PCN/SCN.4/L.9, para. 7 (see LOS/PCN/152 (vol. III), p. 122).

7/ Vienna Convention on Diplomatic Relations, done at Vienna on 18 April 1961 (United Nations, Treaty Series, vol. 500, p. 95).